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Friday, August 16, 2002


AUTOMATIONSOLUTIONS INTERNATIONAL, LLC,

No. 01-11951


[Debtor](#)  (s).

## **Memorandum re Administrative Rent [Claim](#)**

### **Introduction**

The debtor filed its [Chapter 11](#)  petition August 3, 2001. At that time, it was a tenant in commercial premises in Petaluma, California, leased by landlord URO Investments. The leases was deemed rejected as of March 31, 2002, and the debtor vacated possession. URO now seeks allowance of an administrative expense claim in the amount of \$79,709.25. The claim includes \$68,841.17 in rent from August 3 to August 31, 2001 (the "sub rent"), \$35,126.15 in prepetition rent, late charges of 21,670.85, attorneys' fees of \$14,581.68 and interest of \$5,776.71, less \$67,319.41 in credits.

### **Stub Rent**

While there may be a split among the courts as to whether the stub rent is entitled to [priority](#) , the court elects to follow those courts which pro-rate the rent on a daily basis (e.g. In re Travel 2000, Inc., 264 B.R. 444, 451 (Bkrtcy.W.D.Mich. 2001) for two reasons. First, it seems like the soundest approach. Second, this court issued an order on December 17, 2001, denying URO relief from the stay because the stub rent had not been paid based on the assumption that rent ought to be pro-rated; it would be unfair and inconsistent to change the assumption at this time.

### **Attorneys' Fees Late Charges and Interest**

URO would of course be entitled to recover its attorneys' fees, late charges and interest if the debtor had assumed the lease. The issue here is URO's entitlement where its lease has been rejected.

The ordinary rule is that attorneys' fees and expenses based on a prepetition contract are not entitled to priority status, even when incurred postpetition. In re Abercrombie, 139 F.3d 755, 757 (9th Cir. 1998). For less than compelling reasons, most court have nonetheless allowed such obligations as administrative expenses when a lease is rejected. See, e.g., In re MS Freight Distribution, Inc., 172 B.R. 976, 979 (Bkrtcy.W.D.Wash.1994), and cases cited therein. With some reservations, and in the absence of a dissenting line of authority, the court will follow those cases.<sup>(1)</sup>

## Prepetition Rent

The truly troublesome issue in this dispute is the allowability of \$35,126.15 in prepetition rent as an administrative priority claim. Prior to bankruptcy, the debtor had fallen behind in its rent. It had entered into a stipulated judgment in state court unlawful detainer proceedings with URO whereby \$35,126.15 in past due rent would be paid on August 20, 2001. Since the [bankruptcy petition](#) was filed on August 3, URO argues that this agreement transformed the obligation into postpetition rent.

Section 365(d)(3) of the [Bankruptcy Code](#) provides, in pertinent part, that a Chapter 11 debtor "shall timely perform all obligations . . . arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected." Since the obligation to pay the \$35,126.15 arose before the petition and was not made postpetition under any term of the lease but rather a prepetition state court judgment, the court declines to afford it priority status.

## Conclusion

URO's administrative claim shall be allowed as filed, less the \$35,126.15 obligation and interest thereon. Counsel for URO shall submit an appropriate form of order which counsel for the debtor has approved as conforming to this decision.

Dated: August 16, 2002

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Alan Jaroslovsky  
U.S. [Bankruptcy Judge](#)

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